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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,156	03/17/2004	Mark A. Buchalter	441800	3935
27717	7590	10/11/2007	EXAMINER	
SEYFARTH SHAW LLP			CASTELLANO, STEPHEN J	
131 S. DEARBORN ST., SUITE2400			ART UNIT	PAPER NUMBER
CHICAGO, IL 60603-5803			3781	
MAIL DATE		DELIVERY MODE		
10/11/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/802,156	BUCHALTER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	/Stephen J. Castellano/	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 02 August 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1 and 3-7 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1 and 3-7 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_ .  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_ . 5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_

Claim 2 has been canceled. Claims 1 and 3-7 are pending.

Applicant amends the language of claim 1 by adding “non-continuous” to the description of the bag retaining notch. The bag retaining notch as viewed in Fig. 7-9 extends through the entire locking member in a continuous, non-interrupted fashion.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 3-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 now includes a non-continuous bag retaining notch. There is no support for the non-continuous bag retaining notch because this notch is continuous as it extends through the entire locking member in a continuous, non-interrupted fashion.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Marisco.

Marisco discloses a trash receptacle capable of holding a bag, the container comprises a sidewall defining a bag receiving area, having an upper rim, a surface projects from the sidewall horizontally aligned with the upper rim, then into a grooved section 14 and finally horizontally

outwardly again aligned with the upper rim, the grooved section 14 defines a locking portion defining a recess, a locking member (retainer 16) having a bag receiving notch (concave portion 38) is carried by the locking portion when inserted therein as shown in Fig. 2B and 3 in a locking position, a release position is shown in Fig. 2A. Re claim 7, the widened upper half of retainer 16 provides a handle tab.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergaila.

Bergaila discloses a bag holder comprising a sidewall (the inner surface of bag support ring 12) having an upper rim and a surface which projects from the sidewall horizontally aligned with the upper rim (48L), then into a grooved section 14 and finally horizontally outwardly again aligned with the upper rim (48R), the grooved section 14 defines a locking portion defining a recess, a locking member (bag locking ring 18) having a bag retaining notch (groove 36). Re claim 3, pivot structure supports the locking member.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joyce-Middaugh in view of Marisco and Bergaila.

Joyce-Middaugh discloses a bag holder formed by the combination of a trash receptacle and a divider (20), both the receptacle and the divider have the sidewall and the upper rim, the divider has a surface projecting from the sidewall, the surface includes a circumferential portion as well as cross members which extend towards the center, this surface has a locking portion

defining a recess (concave portion 29). a locking member (fastener arm 35) is hinged within the recess. Joyce-Middaugh discloses the invention except for the bag-retaining notch. Marisco and Bergaila both teach bag-retaining notches. It would have been obvious to add the bag-retaining notch to provide an area to collect or gather excess bag material to provide proper operation of the locking member and to maintain an aesthetically pleasing appearance without excessive bag spill-out from the bag locking portion.

Re claims 4-6, Joyce-Middaugh discloses an integrally molded shaft extending across the recess but fails to disclose a second notch to receive a pivot shaft. Bergaila teaches a pivot with a separately rotated pivot shaft separated from a second notch for receiving the pivot shaft. It would have been obvious to modify the Joyce-Middaugh shaft construction to be a separate shaft and a pivot shaft receiving notch to provide for separation to allow easy cleaning or replacement of a damaged locking member without the need to remove or replace the pivot shaft.

Re claim 7, flange 45 of Joyce-Middaugh defines a handle tab.

Applicant's arguments filed August 2, 2007 have been fully considered but they are not persuasive. The surface that projects from the sidewall is integral to the sidewall in the references applied. The locking portion and recess are disposed on the surface adjacent the upper rim in the applied references. The locking member has a continuous notch in the applied references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Art Unit 3781

sjc